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SUBJECT: THE PROPER ORDER OF GOVERNMENT: CORRUPTION AND THE ROLES
OF THE ATTORNEY GENERAL AND THE STATE COMPTROLLER

SUMMARY

¶1. The proliferation of allegations and investigations into the conduct of public sector officials recently prompted questions as to whether Israel's norms of public life have indeed reached an unprecedented nadir, or whether oversight in the person and functioning of the Attorney General and the State Comptroller is characterized by unprecedented zeal. Is ever-widening corruption driving the preoccupation with norms of public conduct or is Israel merely witness to a revamping of ethical norms and levels of transparency? Either way, the guardians of public interest and the rule of law are finding themselves in the eye of a storm which could terminate some high-profile careers along the way to higher ethical standards in Israel's public sector.

THE PEOPLE'S ATTORNEY

¶2. Menachem Mazuz, the current Attorney General, walks a fine line between serving as legal counsel to the government and as guardian of the public interest. As the final arbiter of whether investigations warrant indictment of an individual or the closure of the file, the Attorney General has exclusive authority which may only be overruled by the Supreme Court. His legal opinions are binding on government agencies and he bears responsibility for the consistency of government legislation with the Basic Laws of the state. Complicating the role of the Attorney General is the fact that while his office is designated as a non-political entity, he is appointed by the government on the recommendation of a professional public permanent committee (chaired by a former Supreme Court Justice), for a non-renewable tenure of six years (or until the age of 70, the earlier date prevailing), with a possible extension of six months." (Note: Mazuz was the first Attorney General appointed under this process in 2004. Then-PM Sharon and Minister Olmert abstained from participation in the government appointment process due to ongoing investigations. Mazuz later indicted Sharon's son, Omri, but never issued a formal indictment against the former Prime Minister.) The guidelines for his office stipulate political neutrality while defending the state in legal proceedings, alongside the defense of civil liberties.

THE POLITICS OF PROSECUTION

¶3. If all these seeming "conflicts of interest" were not sufficient, Israel's Attorney General operates in an environment of ongoing political turbulence in which the fate of senior public figures at the hands of the judiciary may have significant political consequences for Israel and, on some occasions, even its neighbors. The most notable dilemma of this kind, faced by the present Attorney General, was the investigation of the role of then PM Ariel Sharon in the "Kern loan affair" and the funding of Sharon's Likud party

leadership election campaign. The case reached the scrutiny of the Attorney General during the sensitive prelude to implementation of Sharon's disengagement plan and has yet to be closed. Prominent among the many investigation files still on the Attorney General's desk are those of President Katzav in regard to sexual harassment and the issuing of pardons; PM Olmert in connection with real estate and privatization deals; and the ever-pending investigation of Minister for Strategic Threats Avigdor Lieberman on suspicion of illicit business deals during the Russian ruble crisis in 1998 and corruption linked to Likud party campaign funding in the same year.

ORDER OF PRECEDENCE

14. While the Attorney General's powers clearly exceed those of the State Comptroller, the process of audit precedes the order to investigate and the decision to indict. Israel recognized the importance of the audit function as far back as 1949 when it enacted the Basic Law: the State Comptroller and reinforced the office in 1971, when the function of Ombudsman was added to the State Comptroller's duties. In this capacity, the State Comptroller is the recipient of complaints from any persons who deem themselves harmed by a public body which is subject to the Comptroller's audit. State audit in regard to regularity, legality, efficiency, economy and moral integrity of state bodies is the primary function of the Comptroller's office. Since 1973 the State Comptroller also audits the accounts of the political parties. The State Comptroller is elected by and accountable to the legislature. Audit findings are submitted to the Knesset. But findings which give rise to suspicion of criminal action must be referred to the Attorney General.

ENTER THE ACTIVIST AUDITOR

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15. Distinct from the role of Attorney General, the State Comptroller's authority is defined in law [State Comptroller Law 1958], thus leaving little to conjecture or interpretation. This fact serves the present Comptroller well amidst the controversy that has been stirred up by his unanticipated activism. For as long as there has been a State Comptroller's office, its reports have elicited, at best, some momentary indignation and more often a lengthy "yawn" from the pundits and media alike. Micha Lindenstrauss, who was elected by the Knesset in 2005, is working to change all that. Whereas previous State Comptrollers completed their reports, submitted their findings and left it to the Knesset or the Attorney General to decide on further action, if any, Lindenstrauss has flagged certain issues for the attention of the Attorney General even prior to completion of his audit. In doing so Lindenstrauss bases himself on Article 43D of the State Comptroller Law which provides that suspicion of a criminal offence is grounds for the involvement of the Attorney General, who then has six months within which to advise the State Comptroller and the Knesset Committee on State Control of the manner in which he has dealt with the matter. This effectively introduces checks and balances in regard to the functioning of the Attorney General. Lindenstrauss has invoked his powers in this manner in no less a case than the investigation of the prime minister's involvement in the sale of Bank Leumi, and has found himself under severe criticism from a surprising quarter.

LINDENSTRAUSS IN THE LINE OF FIRE

16. In the wake of a flurry of disclosures in the media regarding investigations by the State Comptroller of high-level political figures including PM Olmert, five prominent professors published a vituperative attack on Micha Lindenstrauss. The broadside, accusing Lindenstrauss of threatening "the proper governing order in Israel," was published in early November as an advertisement on the front page of the Ha'aretz daily newspaper and simultaneously in the mass circulation Yediot Acharonot. The professors, including Arik Karmon,

the president of the Israeli Institute for Democracy, Amnon Rubinstein, president of the Herzliya Interdisciplinary Center and Yaffa Zilbershatz, Dean of the Law Faculty at Bar Ilan University, accused Lindenstrauss of "irregularities and misconduct" and alleged that his office, specifically his advisor on corruption issues, former Israel police commander Yaakov Borovsky, was deliberately leaking information to the media on sensitive aspects of investigations in progress.

ALLEGEDLY OUT OF CONTROL

17. One of the five professors, Shlomo Avineri of the Hebrew University's Department of Political Science, was widely interviewed by the electronic media and went as far as to allege that a form of witch-hunt was in progress. While concurring that the investigations were legitimate and necessary, Avineri insisted that the leaks to the media prior to completion of the comptroller's investigation were unacceptable. The public, Avineri claimed, viewed these leaks as actual findings without benefit of a hearing. Investigations, Avineri declared, must be carried out discreetly and, if the findings warranted it, they should be submitted to the public, the Knesset and the police. The State Comptroller's office, he said, had until now been free of politicization, and had been held in high regard. It was the job of the investigators, Avineri affirmed, to fight corruption and not to fight heads of government. If they were fighting the heads of government that was a political matter and its place was within the political system. Asked if there was a possibility that political motives were involved in the conduct of the State Comptroller, however, Avineri said he would not dream of making such an allegation.

TAKING ON THE STRATEGIC THREAT

18. Whatever the motive force driving the activism of the present State Comptroller, the consequences of his activism have the potential to galvanize oversight and control in ways that can only benefit compliance with reasonable ethical norms in public life. As far back as April this year, Lindenstrauss admitted that he had discovered that "governmental corruption is broader and deeper than what I thought...." In an interview with Yediot Acharonot, Lindenstrauss identified what he deems a greater evil than corruption itself: "I found initial signs of something very dangerous: Acceptance of corruption."

CORRUPTION IS NOT THE GREATEST EVIL

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19. Israel's standings in a comparative international index of perceptions of corruption show a progressive deterioration in Israel's rankings. A report by Transparency International, issued in early November, showed Israel ranked 34 out of 163 countries placed in descending order, compared with 28 in 2005 (26 in 2004; 21 in 2003; 18 in 2002; 16 in 2001). Transparency International plans a study of corruption in Israel in 2007, but until such a study is undertaken, there is scant indication of whether corruption in Israel has increased internally. What is clear is that the activism of State Comptroller Micha Lindenstrauss is controversial not only among the subjects of his scrutiny but in academic and intellectual circles which pose disturbing questions as to who should watch over the watchdogs of "proper government".

THE DEMISE OF THE SACRED COWS

110. In recent days, the Knesset Committee on State Control invited Lindenstrauss to answer his critics in a special session dealing with the allegations of leaks from his office. Lindenstrauss told the committee that he was undeterred by the accusations that he was

persecuting the prime minister or exceeding his purview: "There are no more sacred cows" he declared. "This is over. Everyone is equal... There are no more situations of sweeping matters under the carpet. That is over. Matters will be open, transparent; people will know what is going on."

JONES